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Paper No. 19

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In re Application of :
Uckun :
Application No. 09/345,815 :
Filed: 06/30/1999 :
Attorney Docket No. 957.001US1 :

COPY MAILED

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OFFICE OF PETITIONS

ON PETITION

FACTS

This is a decision on the September 6, 2001 petition which requests under 37 C.F.R. §1.182 that the office allow the entry of the sequence listing attached to the petition. The petition fee has been received. The office sincerely apologizes for the delay and any inconvenience caused by it.

RULES

§1.182 Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in §1.17(h).

§1.314 Issuance of patent.

If applicant timely pays the issue fee, the Office will issue the patent in regular course unless the application is withdrawn from issue (§1.313) or the Office defers issuance of the patent. To request that the Office defer issuance of a patent, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

§1.312 Amendments after allowance.

No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the application from issue.

§ 1.313 Withdrawal from issue.

(c) Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;

(2) Consideration of a request for continued examination in compliance with § 1.114; or

(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

(d) A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials before the date of issue. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

ANALYSIS

Applicant seeks to amend the record after payment of the issue fee. This is specifically prohibited by 37 C.F.R. §1.312. However, this situation *is* provided for under 37 C.F.R. §1.314. Accordingly, since 37 C.F.R. §1.182 applies only in situations that are not specifically provided for under the regulations, the petition under 37 C.F.R. §1.182 is ***dismissed***.

The proper method for achieving the desired ends is to file a petition under 37 C.F.R. §1.314 to defer issuance of the patent.

Accordingly, this petition will be treated as a petition to defer issuance under that rule and that request is **granted**. Petitioner is given one month to file a request for continued examination. The sequence listing provided will serve as the required submission under 37 C.F.R. §1.114.

If the RCE is not received by the office within one month of the date of this mailing, the application will be forwarded to Publications division for processing into a patent.

Telephone inquiries relative to this decision should be directed to Petitions Attorney Scott M. Ledford at (703) 306-5593.

A handwritten signature in black ink, appearing to read "Scott M. Ledford", is written over the printed name.

Scott M. Ledford
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy